



VIA CERTIFIED MAIL & E-MAIL (ogc@hq.dhs.gov)

March 9, 2019

John M. Mitnick, General Counsel
Office of the General Counsel
U.S. Department of Homeland Security
245 Murray Lane, SW
Mail Stop 0485
Washington, DC 20528-0485

**RE: Claim under the Federal Tort Claims Act Due to Injury and Damages Resulting
from Inadequate Medical Care at ICE Processing Center in Aurora, Colorado**

Dear Mr. Mitnick,

I write on behalf of my client René Lima Marín, who suffered for months on account of inadequate medical care he received while he was detained at the U.S. Immigration and Customs Enforcement ("ICE") Processing Center in Aurora, Colorado. Mr. Lima Marín brings a claim under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. § 2671, *et seq.*, for the resulting significant damages he suffered while in the custody of the United States Government, acting through ICE and its agents.

A completed Standard Form 95 ("SF-95") signed by Mr. Lima Marín is enclosed, along with an attachment to the SF-95. Thank you for your attention to this matter. Please contact me at 970.250.4221 or danielle@novo-legal.com if you need any additional information.

Sincerely,

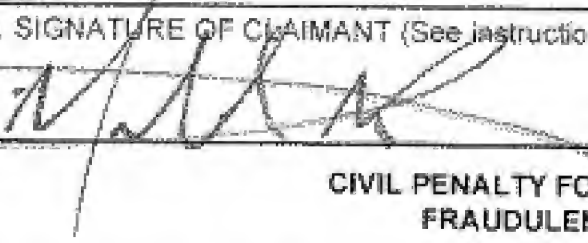
A handwritten signature in black ink, appearing to read "Danielle C. Jefferis", written over a horizontal line.

Danielle C. Jefferis, Esq.
Of Counsel

Encl: Standard Form 95 and SF-95 Attachment

CC: Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
500 12th Street SW, Floor 9
Washington, DC 20536-5098

Denver Enforcement and Removal Operations Field Office
U.S. Immigration and Customs Enforcement
12445 East Caley Avenue
Centennial, CO 80111

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit to Appropriate Federal Agency: U.S. Department of Homeland Security 245 Murray Lane, SW Mail Stop 0485 Washington, DC 20528-0485			2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse). Number, Street, City, State and Zip code. René Lima Marin c/o Danielle Jefferis, Novo Legal Group 4280 Morrison Road Denver, CO 80219		
3. TYPE OF EMPLOYMENT <input type="checkbox"/> MILITARY <input checked="" type="checkbox"/> CIVILIAN	4. DATE OF BIRTH <div style="background-color: black; width: 100px; height: 20px;"></div>	5. MARITAL STATUS married	6. DATE AND DAY OF ACCIDENT 02/07/2018	7. TIME (A.M. OR P.M.) 6 P.M. (approx.) <i>through present</i>	
8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary). See attached letter.					
9. PROPERTY DAMAGE					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code). NONE					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side). NONE					
10. PERSONAL INJURY/WRONGFUL DEATH					
STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT. See attached letter.					
11. WITNESSES					
NAME		ADDRESS (Number, Street, City, State, and Zip Code)			
GEO Detention Center staff Jeffrey Peterson		3130 North Oakland Street Aurora, CO 80010			
12. (See instructions on reverse). AMOUNT OF CLAIM (in dollars)					
12a. PROPERTY DAMAGE 0.00	12b. PERSONAL INJURY 1,000,000	12c. WRONGFUL DEATH 0.00	12d. TOTAL (Failure to specify may cause forfeiture of your rights). 1,000,000		
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side). 			13b. PHONE NUMBER OF PERSON SIGNING FORM <div style="background-color: black; width: 100px; height: 20px;"></div>	14. DATE OF SIGNATURE 3-1-19	
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).			CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)		

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident Insurance? ☐ Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. ☒ No

NONE

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? ☐ Yes ☒ No 17. If deductible, state amount.

NONE

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

NONE

19. Do you carry public liability and property damage insurance? ☐ Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). ☒ No

NONE

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

DAMAGES IN A **SUM CERTAIN** FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN **TWO YEARS** AFTER THE CLAIM ACCRUES.

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

The amount claimed should be substantiated by competent evidence as follows:

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

The claim may be filled by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

(b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. **Authority:** The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

B. **Principal Purpose:** The information requested is to be used in evaluating claims.
C. **Routine Use:** See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.
D. **Effect of Failure to Respond:** Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.

SF-95 Attachment— Claimant René Lima Marín

7. Time (A.M. or P.M.)

Mr. Lima Marín estimates he first sustained the injury giving rise to this claim around 6:00 p.m. on February 7, 2018. The extreme pain and suffering he endured as a result of the conduct of ICE employees and/or agents, as well as other damages, began at that point and continues through the present.

8. Basis of Claim

Factual Basis for Claims

Mr. Lima Marín was arrested and detained in the Aurora ICE Processing Center (“Aurora” or “Aurora detention center”) in May 2017 in connection with a deportation order tied to a criminal conviction, in spite of a full pardon of that conviction from Colorado Governor John Hickenlooper. On February 7, 2018, he slipped and fell in the detention center while wearing the paper-thin slippers provided to detainees, and slammed his face on the edge of the steel toilet in his cell. As he stood up, dazed, he looked in the mirror: Mr. Lima Marín had fallen with such force, he could see the imprint of the edge of the toilet on his cheek. He called for immediate medical attention, and detention center staff escorted him to the medical unit.

Two nurses were in the medical unit when Mr. Lima Marín arrived. They both looked at him with what seemed to Mr. Lima Marín to be utter confusion over what to do or how to care for him. By this point, Mr. Lima Marín was sweating excessively and feeling disoriented. He was also in extraordinary pain. He told the nurses what happened and waited for them to assess his injury or respond in some manner appropriate for the urgency of the situation. Yet, to Mr. Lima Marín’s knowledge, they did nothing but give him a couple of Ibuprofen tablets. For over an hour, Mr. Lima Marín sat in a chair in the medical unit—in excruciating pain, waiting for someone to provide him the medical attention such a serious injury required.

Finally, it seemed someone realized Mr. Lima Marín’s injury was serious and that he needed to get to the hospital right away. He was transported¹ to the emergency room at University of Colorado-Health (“UC-Health”) and examined by physicians there. At the hospital, Mr. Lima Marín learned he had fractured multiple bones in his face. UC-Health physicians told him he needed to return for follow-up evaluation and treatment, including surgery, within a week or two or he would risk suffering permanent impairments. The doctors

¹ Disturbingly, Mr. Lima Marín was transported to the hospital emergency room in wrist and ankle shackles. Although Mr. Lima Marín was a civil detainee, held solely on civil immigration charges, and was suffering extreme pain after the injury to his face, the transport staff refused to remove the restraints during the entire time Mr. Lima Marín was in the hospital that night. They even forced Mr. Lima Marín to undergo what Mr. Lima Marín believed to be a CAT scan while cuffed at his hands, ankles, and waist.

prescribed Mr. Lima Marín medication and said he would be scheduled for further appointments and treatment.

Mr. Lima Marín was transported back to the Aurora detention center early in the morning on February 8, 2018. When he returned, detention center staff threw him into a holding cell and told him he could not go back to his housing unit until the detention center doctor evaluated him. This meant that after fracturing several bones in his face and spending the entire night in the emergency room, Mr. Lima Marín was forced to wait in a cold, empty cell for the doctor to see him.

But that doctor never came. Finally, Mr. Lima Marín told detention center staff that if the doctor was not going to come, he preferred to go back to his cell where he could lie down, rest, and attempt to achieve some sort of relief from the extreme—nearly disorienting—pain and serious discomfort he was experiencing. So, rather than attempt to reach the doctor or investigate whether he was on his way, staff simply took Mr. Lima Marín back to his cell.

In the days and weeks following Mr. Lima Marín's fall, detention center staff refused to fill the prescription ordered by the physicians at UC-Health. Instead, they substituted Mr. Lima Marín's ordered medication for a far weaker alternative that did very little to nothing to alleviate his pain, which was accompanied by increasingly worse swelling and pain in Mr. Lima Marín's temple, near his fractured bones. Compounding the issue, more often than not the detention center staff failed to put even the weaker medication on the cart when they came to Mr. Lima Marín's housing unit for pill line. When Mr. Lima Marín asked for his medication, staff sometimes gave him Ibuprofen tablets—a clearly inferior treatment for the pain attendant with numerous fractured bones in a person's face—and other times they gave him nothing. The untreated pain of numerous facial fractures was nearly unbearable.

Mr. Lima Marín was suffering so greatly and receiving so little care that he sought legal assistance to try to obtain some sort of relief. Undersigned counsel sent a letter around February 16, 2018, to the detention center's Warden, Johnny Choate, outlining the situation and urging detention center staff to provide Mr. Lima Marín the medical care necessitated by his serious injuries. It was not for two weeks, however, that the detention center doctor finally saw Mr. Lima Marín.

On February 21, 2018, Mr. Lima Marín was taken to a holding cell where he waited for more than an hour. He thought at that point he was going to be transported to this hospital for his follow-up surgery. But he just sat there. Finally, after trying to get someone's attention for what felt like hours, detention center staff took Mr. Lima Marín to an examination room in the medical unit. Before Mr. Lima Marín could even sit down, Dr. Jeffrey Peterson, the detention center doctor, began immediately to accuse Mr. Lima Marín of being combative with staff and to berate Mr. Lima Marín for involving his lawyers in his medical care. Mr. Lima Marín was stunned by the encounter because it was the first time he had interacted with Dr. Peterson and had in no way been combative with anyone. He calmly emphasized to Dr. Peterson that he was

only trying to obtain the treatment ordered by the UC-Health physician and something to alleviate the extreme pain he had been experiencing for weeks. Rather than evaluate Mr. Lima Marín's injuries—or even ask Mr. Lima Marín how he was feeling—Dr. Peterson refused to listen. He interrupted Mr. Lima Marín and accused him of lying and exaggerating his injuries.

After his bizarre and threatening encounter with Dr. Peterson, Mr. Lima Marín went back to his housing unit. For the next couple of weeks, detention center staff still refused to fill his hospital-ordered prescription. They still failed to bring any medication for him at times and at others gave him just Ibuprofen. For an entire week stretch, he received no medication at all. Mr. Lima Marín continued to suffer from excruciating pain, sometimes shooting, sharp pangs in his temple, and worsening numbness and swelling in his face. Chewing on that side of his mouth was too painful, and the headaches were virtually intolerable.

Around March 15, 2018, detention center staff finally transported Mr. Lima Marín to an outside eye center for an evaluation (again, in full shackles). There, the doctor again told him he needed surgery. This time, however, the bones had already begun to heal so the doctor told him he needed to re-fracture the bones to realign them. If he did not do so, the doctor said, Mr. Lima Marín risked permanent impairment.

Fortunately, on March 26, 2018, Mr. Lima Marín learned he had won his immigration case. He was released from the Aurora detention center that day.

To date, Mr. Lima Marín is a free man but he still suffers from the failure of ICE employees and/or agents to provide adequate medical care for his serious medical need. The side of his face where he sustained the bone fractures is numb and, at times, painful. By this point, the bones have healed improperly and doctors have told him the only way to address the issue is to re-fracture those bones and perform surgery again—the surgery he was supposed to receive within a week or two of the injury. Mr. Lima Marín may not even know at this point the full extent of the effects of the poor treatment he received.

Legal Basis for Claims

Medical Negligence

ICE had a duty to ensure the people who are detained in its custody at Aurora receive adequate medical care that adhered to the community standards of care. ICE breached its duty to failing to ensure Mr. Lima Marín received adequate medical care for the injuries he sustained. As a direct and proximate result of the inadequate, substandard medical care provided by physicians and other health care providers employed by and/or agents of ICE, Mr. Lima Marín suffered extreme pain and avoidable complications of his injuries, including permanent impairment. The negligence of ICE's employees and/or agents caused Mr. Lima Marín to suffer extreme and extended physical, mental, and emotional pain and distress, medical expenses, and other ongoing harms.

Negligent Hiring, Training, and Supervision

ICE had a duty to prevent its employees or agents from causing physical harm to a third party. ICE breached its duty by failing to ensure safe and humane conditions at Aurora, including by failing to carry out adequate management oversight of the provision of medical care at the detention center. As a direct and proximate result of ICE's acts, omissions, and conduct, Mr. Lima Marín suffered extreme pain and avoidable complications of his injuries, including permanent impairment. ICE's negligent supervision caused Mr. Lima Marín to suffer extreme pain and extended physical mental, and emotional pain and distress, medical expenses, and other ongoing harms.

This is not intended to be an exhaustive list of possible causes of action. The deprivations Mr. Lima Marín experienced in Aurora also constitute a violation of his constitutional right to adequate medical care and due process, and accordingly, is not subject to any FTCA exception.

10. Personal Injury—Nature and Extent of Each Injury

As explained herein, Mr. Lima Marín suffered extreme pain and avoidable complications of his injuries, including permanent impairment, as well as extreme and extended physical, mental, and emotional pain and distress, medical expenses, and other harms.

11. Witnesses

Possible witnesses include detention center staff, Dr. Peterson, and any other ICE employees and agents present during the events giving rise to this claim. This is not intended to be an exhaustive list of possible witnesses.